

Floodplain Fill

Timing Defines “Fill”

Questions about floodplain fill typically relate to National Flood Insurance Program requirements because property owners want to – as they say it – get out of the floodplain by piling dirt around their homes. Depending on the amount of the earthy material used to change the grade or elevation of real property, a state permit may or may not be required from the Division of Water Resources. Visit the DWR Water Structures website for Kansas requirements at <http://www.ksda.gov/structures/> for further information.

As for NFIP requirements, the Code of Federal Regulations Title 44 parts 65 and 70 contains floodplain fill requirements dealing with the importance of timing when fill is placed in a location. For example, if placed before the area is identified as floodprone and before a flood map shows the property to be in the special flood hazard area, earthy material is considered natural grade and not fill. A property owner with a house on a pad of fill dirt could file for a Letter Of Map Amendment in this situation with the LOMA reviewed in accordance with Part 70.

When placed in an area that has already been identified as floodprone, earthy material is considered to be fill and is not treated like a natural grade. If a property owner brings in fill dirt after the property has been identified as being in the special flood hazard area, then the property owner must file a Letter Of Map Revision based on Fill. The LOMR-F would be reviewed in accordance with Part 65.

The LOMA form is easier and less expensive to complete than the LOMR-F. Property owners may try to file for a LOMA when a LOMR-F is appropriate. Reviewing past aerial photos and historic flood maps will help in determining when an area was first mapped into the special flood hazard area and when the fill was placed.

If fill is placed in a location already identified as in the special flood hazard area, a local community floodplain development permit is always required for new development in the floodplain. However, some communities have not been issuing floodplain development permits for fill dirt saying when the LOMR-F is approved it will no longer be in the floodplain, it is “only dirt,” or DWR has already issued a permit. This is incorrect: a local permit must be issued.

Community officials issuing floodplain development permits should consider questions such as will piling dirt around a foundation prevent a basement from flooding? Or will bringing in fill dirt for one property divert water onto the neighbor’s property? *This information was adapted from an article written by Steve Samueulson, Division of Water Resources, in Floodplain Management Newsletter Dec. 2011.*